No. 90-461

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

DISTRICT OF COLUMBIA, *et al.*,
Petitioners

v.

LANI MOORE, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Education of the Handicapped Act, 20 U.S.C. 1400 et seq., authorizes the award of attorneys' fees to parents of handicapped children who prevail on the merits in administrative proceedings.

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STATEMENT

1. The Education of the Handicapped Act (EHA), 20 U.S.C. 1400 et seq., provides that, as a condition of obtaining federal financial assistance, a state must "ha[ve] in effect a policy that assures all handicapped children the right to a free appropriate public education." 20 U.S.C. 1412(1). A state must also ensure that a parent or guardian will have "an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement" of a handicapped child. 20 U.S.C. 1415(b)(1)(E).

A parent or guardian who makes such a complaint is entitled to "an impartial due process hearing" before the state or local education agency. 20 U.S.C. 1415(b)(2).

The EHA specifically grants parents "the right to be accompanied and advised by counsel" throughout the administrative process. 20 U.S.C. 1415(d)(1). "Any party aggrieved" by an administrative action may seek judicial review by filing a civil action in state court or in a United States District Court. 20 U.S.C. 1415(e)(2).

When the EHA was first enacted, it contained no explicit provision for attorneys' fees. In 1986, Congress enacted the Handicapped Children's Protection Act, Pub. L. No. 99-372, 100 Stat. 796 (HCPA), which, among other things, amended the EHA to authorize the award of attorneys' fees.[1] Specifically, the HCPA added 20 U.S.C. 1415(e)(4)(B), which provides:

> In any action or proceeding brought under this subsection, the court in its discretion may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party.

2. Respondents are nine handicapped students and their parents or guardians. Each was initially denied an appropriate special education placement by petitioners, who are the District of Columbia and the superindendent of its public schools. After one or more administrative hearings under the EHA, each respondent prevailed, achieving the placement initially refused by petitioners. Respondents then requested that petitioners reimburse them for attorneys' fees and costs incurred in the administrative proceedings. When petitioners refused, respondents brought this action in the United States District Court for the District of Columbia.

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[1] Congress enacted the HCPA in response to this Court's decision in *Smith v. Robinson*, 468 U.S. 992 (1984), which held that the EHA provided the exclusive remedy for a wide range of claims by handicapped children. Parents were thus precluded from filing claims under related statutes that provided for attorneys' fees. The HCPA not only overruled this holding of *Smith v. Robinson*, see 20 U.S.C. 1415(f), but added an independent provision for attorneys' fees to the EHA.

The district court awarded fees. Pet. App. 68a-74a. A divided panel of the court of appeals reversed. *Id.* at 25a-60a. The panel majority concluded that because respondents prevailed in the administrative proceedings, without having to resort to court, they were not entitled to attorneys' fees under the HCPA. Judge Edwards dissented. *Id.* at 61a-67a.

3. The court of appeals granted rehearing en banc (Pet. App. 76a) and unanimously overturned the panel's ruling.[2] The unanimous en banc court of appeals held that respondents are entitled to attorneys' fees for the work done in connection with the administrative proceedings. *Id.* at 1a-24a.[3]

a. The court of appeals concluded that this interpretation follows from the plain language of the HCPA. Pet. App. 5a-14a. The court of appeals noted that Section 1415(e)(4)(B) uses the phrase "action or proceeding" and stated that "[w]e are at a loss to give meaning to the distinction between 'action' and 'proceeding' short of inferring that Congress meant to authorize fees for parents who prevail either in a *civil action* or in an *administrative proceeding*" (Pet. App. 6a; emphasis in original). The court of appeals further noted that "EHA and HCPA unambiguously use the terms 'action' and 'proceeding' in several places to distinguish between the administrative and judicial phases of EHA litigation." *Ibid.*, citing 20 U.S.C. 1415(e)(2), 1415(e)(4)(D).

The court of appeals also relied on the plain language of another provision of the HCPA, 20 U.S.C. 1415(e)(4)(D).

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[2] Judge Williams, who had been a member of the panel majority, joined the opinion of the en banc court.

[3] Petitioners' appeal to the court of appeals also challenged the amount of fees awarded. The en banc court of appeals remitted this issue to the panel. Pet. App. 24a. The panel subsequently affirmed the district court's award of fees in its entirety. *Moore v. District of Columbia*, No. 88-7003 (Sept. 20, 1990).

Section 1415(e)(4)(D) provides that attorneys' fees are not to be awarded for services performed after a qualifying offer of settlement is made to a parent or guardian, if the relief finally awarded is no more favorable than the offer of settlement.[4] The court of appeals noted that Section 1415(e)(4)(D)(iii) provides that either "the court or [the] administrative officer" is to compare the settlement offer with the "relief finally obtained." Pet. App. 10a. The court of appeals then reasoned as follows:

> Because an administrative officer would have occasion to make th[is] comparative finding . . . only in the event that the parent achieves 'final[]' relief in an administrative proceeding, HCPA clearly contemplates that the issue of attorney fees will survive an otherwise successful outcome for the parent at the administrative stage.

Ibid. (footnote omitted; last brackets in original).

The court of appeals also noted that Section 1415(e)(4)(D)(i) specifies certain time limits for a qualifying settlement offer: "within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins." The court reasoned that "[i]f a parent were entitled to fees *only* upon pre-

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[4] 20 U.S.C. 1415(e)(4)(D) provides:

> No award of attorneys' fees . . . may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement . . . if—
>
> (i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days after the proceeding begins;
>
> (ii) the offer is not accepted within ten days; and
>
> (iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

vailing in court . . . the independent ten-day limit applicable 'in the case of an administrative proceeding' would be meaningless" (Pet. App. 11a; emphasis in original).

Finally, the court of appeals relied on the plain language of Section 4 of the HCPA, which requires the Comptroller General to "conduct a study of the impact of" the attorneys' fees provision. Pub. L. 99-372, 100 Stat. 797 (uncodified). The court noted that Congress directed that this study identify the number of written decisions under the provisions of the HCPA that provide for administrative hearings, and the prevailing party in each decision. Pet. App. 12a. The court of appeals stated that it "would be difficult . . . to explain how this information would be relevant to the study were the prevailing parties in these administrative proceedings not entitled to recovery of their fees." *Ibid.*

b. Although the court of appeals concluded that its interpretation of the HCPA "best comports with the text and structure of HCPA" (Pet. App. 14a), it also examined the legislative history. The court noted that petitioners do not dispute that the House of Representatives sought to authorize parents who prevail in administrative proceedings to obtain fees. *Id.* at 15a. The court stated that the relevant portions of the Senate report, and the unequivocal remarks of "[t]he only Senator to address the question during the floor debate" (*id.* at 18a), specifically stated that fees should be awarded to parents who prevail in administrative proceedings.

The court of appeals also concluded that "[t]he disposition of the respective House and Senate bills in conference furnishes the strongest evidence that *both* chambers intended HCPA to authorize fees for parents who prevail in EHA administrative proceedings." Pet. App. 21a (emphasis in original). Specifically, the House bill had contained, "[a]s a concession to those Representatives who opposed awarding fees to parents who prevail

at the administrative level" (*id.* at 21a), a provision that the authority to award fees in these circumstances would expire after four years. See *ibid.* The conference report deleted this "sunset" provision with the following explanation (H.R. Conf. Rep. 687, 99th Cong., 2d Sess 7 (1986)):

> The House amendment, but not the Senate bill, sunsets the court's authority to award fees at the administrative level . . . .
>
> The House recedes.

The court of appeals concluded that this action by the conference committee revealed the shared understanding of the House and Senate that "the resulting bill retains without restriction 'the court's authority to award fees at the administrative level.'" Pet. App. 22a.

In addition, the court of appeals noted the post-conference statements by House conferees who had opposed awarding fees to parents who prevail in administrative proceedings. Two of those members stated on the House floor, just before the House approved the conference report, that the bill authorized fee awards in those circumstances; that they were disappointed that it did; but that they nevertheless on balance supported the bill and urged their colleagues to vote for it. See Pet. App. 22a-23a. The court of appeals stated (*id.* at 23a):

> Unless we are to assume that these Representatives totally misunderstood what transpired in conference . . . it is clear from their statements that the conferees understood deletion of the House sunset provision as removing any limit on the court's authority to award fees to parents who prevail at the administrative level.

ARGUMENT

The decision of the unanimous en banc court of appeals is correct. As petitioners concede (Pet. 24), there is no conflict in the circuits on the question presented by this case: six other courts of appeals (four in holdings and two in dicta) have addressed the question presented here, and each of them has reached the same result as the court below. This Court has recently declined to review the question presented here. *Muscogee County School District v. Mitten*, cert. denied, 110 S. Ct. 1117 (1990) (No. 89-905). See also *Venus Independent School District v. Shelley C.*, cert. denied, 110 S. Ct. 729 (1990) (No. 89-788). Further review remains plainly unwarranted.

1. Petitioners' principal contention (Pet. 12-14) is that the court of appeals' decision is inconsistent with *North Carolina Department of Transportation v. Crest Street Community Council, Inc.*, 479 U.S. 6 (1986). *Crest Street* concerned 42 U.S.C. 1988, which authorizes the award of attorneys' fees to parties who prevail under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and certain other civil rights statutes. The Court in *Crest Street* held that Section 1988 does not authorize the award of fees to parties who prevail in administrative proceedings under Title VI.

Crest Street, however, did not concern the EHA. It addressed a different statute—a statute that has different language, a different structure, and different legislative history. Every other court of appeals that has addressed the issue presented by this case had *Crest Street* before it; all of them agreed (with no dissenting votes) with the result reached by the court of appeals in this case.

a. The language of Section 1988, the provision interpreted in *Crest Street*, differs from the language of the HCPA. Section 1988 authorizes the award of fees in

"any action or proceeding to enforce a provision of" Title VI and other enumerated statutes. 42 U.S.C. 1988. The Court in *Crest Street* placed great weight on the phrase "to enforce," noting that an independent action for fees, brought after a party obtained complete relief in administrative proceedings, was not an action "to enforce" Title VI or one of the underlying civil rights laws. As the Court explained (*Crest Street*, 479 U.S. at 12; emphasis by the Court):

> [Section 1988] states that *in the action or proceeding to enforce* the civil rights laws listed . . . *the court* may award attorney's fees. The case before us is not, and was never, an action to enforce any of these laws. On its face, § 1988 does not authorize a court to award attorney's fees except in an action to enforce the listed civil rights laws.

Section 1415(e)(4)(B) does not use the words "to enforce"; rather, it refers to "any action or proceeding brought under this subsection." As the Court ruled in *Crest Street*, an independent action for fees under section 1988 is not an action "to enforce" one of the enumerated civil rights laws. By contrast, however, an independent action for fees under Section 1415(e)(4)(B) *is* "an[] action or proceeding under this subsection." As the court of appeals explained, Congress envisioned that an independent action for fees would be brought under subsection (e)(4). "[T]he text and structure of HCPA directly support the inference that Congress intended section 1415(e)(4) to provide an independent cause of action for fees." Pet. App. 13a; see *id.* at 13a-14a.

b. The structure of the EHA also differs significantly from that of the statutes involved in *Crest Street*. As the court of appeals stated, "[a]dministrative proceedings occupy a central place in the remedial framework established by EHA." Pet. App. 6a, citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988); see also *Smith v. Robinson*, 468 U.S. 998, 1009-13 (1984). In particular, the EHA gen-

erally requires the exhaustion of administrative remedies. See *Honig*, 484 U.S. at 326-27; *Smith v. Robinson*, 468 U.S. at 1014. The statutes enumerated in Section 1988, by contrast, do not require the exhaustion of administrative remedies.

It would be logical for Congress to distinguish, for purposes of awarding fees in administrative proceedings, between claimants who are required to resort to administrative proceedings and those who are not. Arguably claimants who are required to resort to administrative proceedings have a better claim to be reimbursed for fees than claimants who have an option whether to invoke administrative remedies and have decided that it is in their interest to do so. Cf. *Crest Street*, 479 U.S. at 14.

Moreover, the legislative history shows that Congress did in fact attach significance to this distinction. The Senate report (as we noted, petitioners do not dispute that the House rejected their interpretation of the HCPA) states the following (S. Rep. No. 112, 99th Cong., 1st Sess. 13-14 (1985)):

> The committee . . . intends that [the attorneys' fees provision] should be interpreted consistent with fee provisions of statutes such as title VII of the Civil Rights Act of 1964 which authorizes courts to award fees for time spent by counsel in mandatory administrative proceedings under those statutes. See *New York Gaslight v. Carey*, 447 U.S. 54 (1980) (compare *Webb v. Board of Education for Dyer County*, [471 U.S. 234 (1985)] in which the court declined to award fees for work done at the administrative level because the statute under which the suit was brought did not require the exhaustion of administrative remedies before going to court).

In *New York Gaslight v. Carey*, which interpreted the attorneys' fees provision of Title VII of the Civil Rights Act of 1964—a statute that does require exhaustion—

this Court stated that fees were to be awarded to parties who prevail in administrative proceedings. See, *e.g.*, 447 U.S. at 66, quoted at page 12, *infra*. The legislative history confirms, therefore, that when Congress enacted the HCPA, it distinguished between statutes like the EHA and Title VII, which do require exhaustion—and in connection with which fees are to be awarded to parties who prevail in administrative proceedings—and statutes like those involved in *Crest Street*. See *Webb v. Board of Education*, 471 U.S. 234, 240-41 (1985) (distinguishing between Title VII and Section 1988 on this ground).[5]

c. The Court in *Crest Street* did not rely solely on the plain language of Section 1988; indeed, the Court said that that language only "suggests the answer to the question" whether fees are available. 479 U.S. at 12. The Court then turned to the legislative history of Section 1988, which confirmed that Congress did not intend to award fees to parties who prevailed in administrative proceedings. *Id.* at 12-13. In contrast, the legislative history of the HCPA demonstrates beyond question that Congress intended to authorize the award of fees to such parties.

As the court of appeals explained, the legislative history of the HCPA shows that Congress focused on the

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[5] There is another significant structural difference between the EHA and the statutes covered by Section 1988. A party claiming rights under a Section 1988 statute will seldom, if ever, be a *defendant* in administrative proceedings initiated by the government. By contrast, as this Court has noted, parties claiming rights under the EHA may find themselves in that position. "While many of the EHA's procedural safeguards protect the rights of parents and children, schools can and do seek redress through the administrative review process." *Honig v. Doe*, 484 U.S. 305, 327 (1988).

The desire to provide fees for a claimant who is brought into proceedings involuntarily is another reason why Congress might have intended to permit the award of fees under Section 1415 (e)(4)(B) in circumstances in which an award would not be authorized under Section 1988.

very issue presented in this case and deliberately decided to authorize fee awards to parties who prevail in administrative proceedings. See Pet. App. 15a-24a. For example, the word "proceeding" was added to Section 1415(e)(4)(B) precisely to authorize fee awards in these circumstances. See, *e.g.*, 131 Cong. Rec. 31372 (1985). Indeed, the "sunset" provision (subsequently dropped by the conference committee) accomplished its purpose—providing for the expiration of authority to award fees to parties who prevail in administrative proceedings—by "striking out 'action or proceeding' and inserting in lieu thereof 'civil action'." 131 Cong. Rec. 31370 (1985) (H.R. 1523, Section 6a).

In addition, the conference report and post-conference proceedings powerfully support the court of appeals' decision. As the court of appeals explained, the conference report admits of only one interpretation—that both Houses understood that fees could be awarded to parties who prevail in administrative proceedings. Moreover, as the court of appeals stated, the House conferees who initially opposed the award of fees in these circumstances returned to the House and informed their colleagues that, to their regret, the conference bill provided for the award of fees at the administrative level—but that the bill should be enacted nonetheless. This is overpowering evidence that the court of appeals' interpretation is correct. These members of the House had no incentive to say that the bill provided for fees in these circumstances, unless it was universally understood that the bill in fact did so.

Finally, as the court of appeals explained, *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54 (1980), played a prominent role in the legislative history of the HCPA. In *New York Gaslight*, this Court relied on the use of the phrase "action or proceeding" in the attorneys' fees provision of Title VII of the Civil Rights Act of 1964, Section 706(k) (42 U.S.C. 2000e-5(k)), in holding that Title VII permits the award of fees to parties who pre-

vail in administrative proceedings and bring an action in court only to obtain fees. See *New York Gaslight*, 447 U.S. at 61:

> [T]he words of § 706(k) leave little doubt that fee awards are authorized for legal work done in "proceedings" other than court actions. Congress' use of the broadly inclusive disjunctive phrase "action or proceeding" indicates an intent to subject the losing party to an award of attorney's fees and costs that includes expenses incurred for administrative proceedings.

The reports of both Houses on the bill that became the HCPA, as well as the floor debate, cite *New York Gaslight* as a model for how the attorneys' fees provisions of the HCPA are to be interpreted. See, *e.g.*, S. Rep. No. 112, 99th Cong., 1st Sess. 13-14 (1985); H.R. Rep. No. 296, 99th Cong., 1st Sess. 5 (1985); 131 Cong. Rec. 21392 (1985) (remarks of Sen. Simon).

Petitioners suggest, correctly, that the Court in *Crest Street* questioned some of the analysis of *New York Gaslight*. See 479 U.S. at 14-15. But the Court in *New York Gaslight* was as explicit as it could be in stating that Title VII authorizes the award of fees to parties who prevail in administrative proceedings:

> [T]he availability of a federal fee award for work done in state [administrative] proceedings . . . should not depend upon whether the claimant ultimately finds it necessary to sue in federal court to obtain relief other than attorney's fees.

447 U.S. at 66. The Court then reiterated this understanding of Title VII in *White v. New Hampshire Dept. of Employment Security*, 455 U.S. 451 (1982), which cited *New York Gaslight* for the proposition that "a claimed entitlement to attorney's fees is sufficiently independent of the merits action under Title VII to support a federal suit 'solely to obtain an award of attorney's fees

for legal work done in state and local proceedings'[]." 455 U.S. at 451 n.13, quoting 447 U.S. at 66.

When Section 1415(e)(4)(B) was enacted, *Crest Street* had not yet been decided. *New York Gaslight*, and its reaffirmation in *White*, were the dominant features of the legal landscape in this area. This Court has consistently emphasized that in interpreting language enacted by Congress, the focus must be on " 'the contemporary legal context' " (*Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 379, 381 (1982), quoting *Cannon v. University of Chicago*, 441 U.S. 677, 698-99 (1979)), including "judicial decisions construing comparable language" (*Merrill Lynch*, 456 U.S. at 379). *See also Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 658 (1981); *Brown v. GSA*, 425 U.S. 820, 828 (1976).

As the court of appeals said, even apart from the clear evidence in the legislative history that Congress intended to follow the approach of *New York Gaslight*, it is "both 'appropriate [and] . . . realistic *to presume* that Congress was thoroughly familiar with' the Court's decision in *Gaslight* 'and that it expected its enactment to be interpreted in conformity with' that precedent." Pet. App. 8a, quoting *Cannon*, 441 U.S. at 699 (emphasis, brackets, and ellipsis by the court of appeals). Whatever significance *Crest Street* might have for a statute enacted today, it is anachronistic to use it as petitioners do in the interpretation of the HCPA.

2. Petitioners also challenge the court of appeals' interpretation of the HCPA on the ground that no other attorneys' fees provision authorizes fee awards for parties who prevail in administrative proceedings. See, *e.g.*, Pet. i, 12. But petitioners fail to substantiate their premise that no other attorneys' fees statute authorizes the award of fees in these circumstances.

There are more than one hundred statutes providing for the award of attorneys' fees. See *Marek v. Chesny*, 473 U.S. 1, 43-50 (1985) (appendix to the opinion of Brennan, J., dissenting). In connection with the vast majority of those statutes, the question of fee awards at the administrative level has not yet been resolved. Indeed, it appears that this question is seldom litigated. This Court has decided the question only in connection with Section 1988. *North Carolina Department of Transportation v. Crest Street Community Council, Inc.*, *supra*; *Webb v. Board of Education*, *supra*. Petitioners do not cite a single example of another attorneys' fees provision, apart from Section 1988, that denies fees to a party who prevails in administrative proceedings.

Contrary to petitioners' suggestion, nothing in *Crest Street* indicates the Court's intention to adopt a unitary approach to this issue in connection with all attorneys' fees statutes. *Crest Street* resolved the issue on the basis of the specific language and legislative history of Section 1988. As the court of appeals showed, the language, structure, and history of the HCPA dictate a different interpretation of that statute.

3. Petitioners concede that there is no conflict among the court of appeals on the issue presented by this case. Pet. 24. Four other courts of appeals have held that fees are available to parents who prevail in administrative proceedings under the EHA. *Shelly C. v. Venus Independent School District*, 878 F.2d 862, 863 (5th Cir. 1989), cert. denied, 110 S. Ct. 729 (1990); *Duane M. v. Orleans Parish School Board*, 861 F.2d 115 (5th Cir. 1989); *Eggers v. Bullit County School District*, 854 F.2d 892, 898 (6th Cir. 1988); *McSomebodies v. Burlingame Elementary School District*, 886 F.2d 1558 (9th Cir. 1989), as supplemented, 897 F.2d 974 (1990); *Mitten v. Muscogee County School District*, 877 F.2d 932, 934-35 (11th Cir. 1989), cert. denied, 110 S. Ct. 1117 (1990). Two other courts of appeals have reached the same con-

clusion in dicta.[6] *Counsel v. Dow*, 849 F.2d 731, 740 n. 9 (2d Cir.), cert. denied, 109 S. Ct. 391 (1988); *Arons v. New Jersey State Bd. of Educ.*, 842 F.2d 58, 62 (3d Cir.), cert. denied, 109 S. Ct. 366 (1988). The en banc court of appeals was unanimous in this case, and there have been no dissenting votes in any of the other courts of appeals.

4. We note also that the court of appeals' holding is consistent with the position taken by the Department of Education, the agency responsible for administering the EHA, both before and after the HCPA was enacted. As the court of appeals discussed, while Congress was considering the HCPA, the Secretary of Education advised Congress that "he was dissatisfied with the version of the HCPA enacted by the Senate"—the version that, according to petitioners, adopted their position—"because '[t]he court could also award fees for administrative proceedings *where no court case resulted so long as the parents prevailed in those proceedings.*'" Pet. App. 23a, quoting letter from Secretary of Education Bennett to Representative Bartlett (Sept. 10, 1985) (reproduced at Resp. C.A. Br. Add. A-11 to A-12)[7] (emphasis by the court of appeals). After the HCPA had passed both Houses, Secretary Bennett "reiterated this concern, but nonetheless urged that the bill be signed into law." Pet. App. 23a; see Resp. C.A. Br. Add. A-15 to A-17. As the court of appeals explained, the Secretary's statements are a significant aspect of the legislative history, especially because, if "the Secretary misapprehended the effect of

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[6] Although these statements were dicta, there is reason to believe that they reflect the considered judgments of these courts of appeals. Both cases involved the interpretation of the HCPA. In addition, both cases decided issues closely related to the question whether fees are available to parties who prevail in administrative proceedings.

[7] "Resp. C.A. Br. Add." refers to the addendum to the brief we filed before the en banc court of appeals.

HCPA on this point, Congress would have had a strong institutional incentive to correct him in order to forestall any veto threat." Pet. App. 24a, citing *Zuber v. Allen*, 396 U.S. 168, 192 (1969), and *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 31 (1982).

Moreover, in a series of opinion letters issued since the enactment of the HCPA, the Department of Education has confirmed this view. See Resp. C.A. Br. Add. A-18 to A-24. This Court has made clear that the views of the Department of Education are entitled to deference in interpreting the EHA. See *Honig*, 484 U.S. at 325 & n.8.

5. Finally, petitioners suggest no reason for believing that this is a case of extraordinary importance, and there is evidence suggesting that it is not. As we noted, when Congress enacted the HCPA, it directed the General Accounting Office to study the effect of the attorneys' fees provisions. See page 5 *supra*. The GAO study was issued in 1989. *Special Education: The Attorney Fees Provision of Public Law 99-372* (1989).

The GAO reported that throughout the nation, in fiscal 1988, there were only 763 administrative proceedings in which parents prevailed. *Special Education* at 3. Parents were represented by attorneys in only 54% of all administrative proceedings in fiscal 1988 (although parents represented by counsel prevailed at a higher rate than parents who lacked representation). See *id.* at 25, 26. The fee awards involved in those proceedings will almost always be small: the total fee award for the administrative proceedings in the nine cases involved here, for example, was $29,357.47. *Moore v. District of Columbia*, 674 F. Supp. 901, 910 (D.D.C. 1987), aff'd, No. 88-7003 (D.C. Cir. Sept. 20, 1990).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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